

**LFC Requester:****Christina Keyes****AGENCY BILL ANALYSIS  
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)***and***[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*Original ☒ Amendment ☐  
Correction ☐ Substitute ☐**Date** 1/29/2016**Bill No:** HB 282**Sponsor:** Rep. Gentry and Stewart**Agency Code:** 305**Short** Gender Pay Equity Tax Credit**Person Writing** Susan Sullivan AAG**Phone:** 827-6070 **Email** ssullivan@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE****BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

**Synopsis:**

HB 282 creates the Gender Pay Equity Income Tax Credit and the Gender Pay Equity Corporate Income Credit by enacting a new section to the Income Tax Act and a new section to the Corporate Income and Franchise Tax Act.

In Section 1, HB 282, provides for a new section of the Income Tax Act allowing a taxpayer who employs men and women with 100% gender pay equity to apply to the Taxation and Revenue Department (TRD) for a tax credit equal to five thousand dollars (\$5,000). It specifies the procedures to secure a certificate of eligibility from the human rights commission, limits the claim to one calendar year after certification, requires both the Commission and TRD to develop forms and procedures, allows a rollover up to three years, sets forth other details related to the claim and requires the TRD to compile and present an annual report.

In Section 2, HB 282 provides for a new section of the Corporate Income and Franchise Tax Act allowing a taxpayer who employs men and women with 100% gender pay equity to apply to TRD for a tax credit against tax liability pursuant to the Act, in an amount equal to five thousand dollars, (\$5,000). It specifies the procedure to secure a certificate of eligibility from the human rights commission, limits the claim to one calendar year after certification, requires both the commission and the TRD to develop forms and procedures, allows a rollover up to three years, requires the taxpayer to report the credit, and requires the TRD to compile and present an annual report.

**FISCAL IMPLICATIONS****SIGNIFICANT ISSUES**

The credit would promote compliance with New Mexico and Federal law regarding pay equity.

**PERFORMANCE IMPLICATIONS**

The bill requires the TRD to compile an annual reports to both the tax policy committee and the

LFC with an analysis of the effectiveness and cost of the credit and whether the credit is performing the purpose for which it was created.

## **ADMINISTRATIVE IMPLICATIONS**

The application process is divided between the human rights commission and the TRD. TRD would be in a better position to access administrative implications in the application process and the commission would be in a position to access needs of the certification process.

TRD may need to create additional forms or modify existing forms. On line information and applications would also be impacted. This may also require amendments to existing regulations or new regulation.

Because HB 282 requires the taxpayer to apply for a certificate of eligibility from the human rights commission and on forms prescribed by them, the Commission would also have to develop procedures and forms related to the certification process.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

In New Mexico, Section 28-23-1 to 28-23-6, NMSA 1978, "Fair Pay for Woman Act, (FPWA) prohibits employers from engaging in gender-based wage discrimination. The FPWA applies to employers with four or more employees. The tax credit would bridge the gap for employers with less than four employees. The FPWA, provides for relief under the Human Rights Act.

The federal Fair Pay Act also prohibits gender based wage discrimination.

## **TECHNICAL ISSUES**

None noted. HB 282 appears to anticipate issues related to tax credits by providing for rollover for a maximum of three consecutive years. It also specifies that the provisions apply to taxable years beginning on or after January 1, 2016.

## **OTHER SUBSTANTIVE ISSUES**

It is not mandated within the language of HB 282, that information provided by the taxpayer/employer to state agencies would be in a form which protects individual tax information. Tax information is confidential under both state and federal law. In New Mexico, the Taxpayer Bill of Rights Section 7-1-4.2, NMSA 1978 includes the right to have the taxpayer tax information kept confidential unless otherwise specified in law in accordance with Section 7-1-8, NMSA 1978. Federal IRS regulations governing tax returns provide for criminal penalties for the release of information. Under HB 282, it would be the human rights commission who is charged with developing the process and forms upon which the taxpayer/employer applies for a certificate. The burden on ensuring the information does not breach confidentiality appears to rest with the Commission to create non identifiable forms and procedures at the application/certification phase.

Today January 29, 2016, the EEOC announced proposed changes to its EEO-1 report, requiring certain employers to submit employee pay data W2-earnings and hours worked as a compliance measure under the Fair Pay Act to address the gender pay gap. Use of the term "pay data" and

defining such to describe the information required for certification would eliminate the issue of confidentiality.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.